IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 83 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARIMAL RAMNATH DHOLAKIA - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR MJ BUDDHBHATTI for Appellant(s) : 1,
Mr.Mukesh A.Patel, A.P.P. for Opponent(s) : 1,
MR YN RAVANI for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 26/07/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order dated 24-1-1992 passed by learned Special Judge in Sessions Case no.75 of 1989

whereby the appellant-original accused –Parimal Ramnath Dholakia was convicted for the offence under Sections 409, 477-A of the Indian Penal Code and under Section 5(2) of the Prevention of Corruption Act. He was sentenced to suffer R.I. for five years and fine of Rs.90,000/-, in default, R.I. for one year in respect of the offence under Section 409 of the Indian Penal Code. He was imposed fine of Rs.2000/-, in default R.I. for three months in respect of the offence under Section 477-A of the Indian Penal Code and in respect of the offence under Section 5(2) of the Prevention of Corruption Act, he was sentenced to suffer R.I. for two years and a fine of Rs.5000/-,in default, R.I. for six months.

2. The case of the prosecution, in brief, is that the appellant was posted as a Clerk-Cum-Cashier in Bank of Baroda, Digvijay Plot Branch, Jamnagar, during the period 1987-88. It is alleged by the prosecution that on 6-11-1987 one Kasturben Jhutalal Shah holding Savings Bank Account no.333 with a view to deposit a sum of Rs.10,000/- in cash went to the said Branch of

Bank of Baroda and that the appellant-accused who was Cashier at the relevant time accepted the said amount in cash from Kasturben along with the paying-in-slip and after stamping the counter-foil and putting his initials thereon, he returned the counterfoil to her and accordingly entry was also made by the accused in her pass book showing credit of Rs.10,000/-.in cash. According to the prosecution, the appellant-accused then made entry in the R-37 Register showing receipt of Rs.10,000/- as also in the Savings Bank Ledger Folio of account no.333 of the said Kasturben, however, the accused then with a dishonest intention to misappropriate the amount had scored out these entries. It is further the case of the prosecution that in a similar fashion the appellant accused had misappropriated an amount of Rs.37,500/-which was deposited in cash by Ramabhai Mashribhai Keshwala holder of Savings Account no.8026 on 1-12-1987. It is alleged by the prosecution that again on 11-12-1987 one Muktaben Bhagwanjibhai holding Savings Bank Account no.3560 visited the said

Branch to deposit a sum of Rs.20,000/- and that the appellant-accused who was sitting in the cash counter accepted Rs.20,000/- According to the prosecution, this time the accused only made entry showing credit of Rs.20,000/-in her passbook in his own handwriting but failed to make entries in the R-37 Register and Ledger Sheet. It is alleged by the prosecution that again on 3-2-1988 one Kanji Naran Songara holding Savings Bank Account no.4030 visited the said Branch of the bank to deposit Rs.10,000/- in cash and that the appellant-accused who was the Cashier at the relevant time accepted the said amount along with the paying-in-slip no.425413, stamped the counterfoil, put his initials thereon and handed over the counterfoil to Kanji Naran Songara who in turn gave his passbook to the appellant-accused for making entry , and accordingly, the appellant-accused also made an entry in the passbook showing credit of Rs.10,000/-. According to the prosecution, the appellant accused although made an entry in this regard in the R-37 Register, he thereafter,

scored out the said entry. It is further alleged that the said Kanji Naran again visited the said Branch of the bank to deposit Rs.5000/-in cash on 11-2-1988 and that the appellant accused accepted the amount of Rs.5000/-in cash along with the paying-in-slip, put his initials on the counterfoil and returned the same to Kanji Naran. The accused also made entry in the passbook of Kanji Naran showing credit of Rs.5000/- on 11-2-1988, but did not make any entry to that effect in the R-37 Register. It is further alleged by the prosecution that on 3-2-1988 one Rajnikant Amrutlal Zinjuwadia holding a joint saving Bank Account no.1838 visited the bank to deposit Rs.30,000/- and that the appellant –accused had misappropriated amount in the same manner as that of Kanji Naran Songara on 3-2-1988 as stated above. It is also alleged by the prosecution that on 4-4-1988 one Amrutlal Desabhai Zinjuwadia, father of the said Rajnikant holding joint S.B.Account no.1838 visited the said Branch of the bank to withdraw an amount of Rs.10,000/- for which he gave a cheque dated 4-4-1988 at the

counter and received a token against the same from the counter clerk. According to the prosecution, the appellant-accused having already misappropriated an amount of Rs.30,000/-in respect of account no.1838 on 3-2-1988 was watching this transaction and since he knew that sufficient balance was not there in that account, the appellant-accused himself deposited an amount of Rs.10,000/- in the said account by preparing paying-in-slip and also making an entry of Rs.10,000/- in R-37 Register in his own handwriting, and accordingly, the appellant accused had made debit as well as credit entries in the account of Zinjuwadia. Thus, according to the prosecution, the appellant-accused had not only without any authorization made payment of Rs.10,000/- from his own counter to Zinjuwadia but also made an entry in the R-37 Register to the effect that he had advanced an amount of Rs.10,000/- to the Chief Cashier who was at the relevant time the paying cashier. It is also alleged by the prosecution that in the same manner in which the appellant-accused had

misappropriated the amount of account holder no.333 Kasturben, as stated above, the appellant-accused had misappropriated an amount of Rs.10,000/- in respect of Bhagwanji Punja Chanderia holder of S.B.Account no.5388 on 4-4-1988. It is thus the case of the prosecution that the appellant–accused by these acts with a dishonest intention to cheat the customers of the bank and the bank itself had indulged into falsification of the accounts of the bank, and thereby misappropriated an amount of Rs.1,22,500/-by abusing his official position as a public servant. In connection with the aforesaid offence, Police Inspector, C.B.I, Ahmedabad Branch at the relevant time registered F.I.R on 18-8-1988 at 15.00 hours. During investigation, the Investigating Officer carried out the necessary formalities like search of the house of the appellant-accused by taking out search warrant, seizure of documents from the house of the accused, obtained specimen handwritings of the accused on different dates, recorded statement of the customers-account

holders and seized the counter-foils of the paying-in-slip, pass book etc., recorded the statement of various bank personnel. Thereafter, the Investigating Officer forwarded the seized documents including a list of questioned documents as also a list of specimen handwritings of the appellant-accused to the Superintendent of Police who sent the same to the handwriting experts for opinion and on receipt of the opinion dated 28-8-1989 placed the same on the record of the case. On completion of investigation and obtaining sanction for prosecution as required, challan was submitted against the appellant-accused before the learned Special Judge, Court no.3, Ahmedabad. The learned Special Judge framed the charge Exh.10 and read over and explained the charges under Sections 409, 477-A of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act on 20-2-1991. The appellant-accused denied his indictment and claimed trial.

3. To prove the culpability of the appellant-accused, the prosecution examined as many as 20 witnesses , namely, PW 1 B.N.Menon at

Exh.14, PW 2 Harising Dhanak (Panch) at Exh.15, PW 3 G.B. Rammurti (Sanctioning Authority) at Exh.19, PW 4 Dhansukhlal Harekrushna Thakar (Chief Cashier) at Exh.23, PW 5 Rajnikant Amrutlal Zinjuwadia, Account holder, at Exh.50, PW 6 Kanji Naranbhai, Account holder at Exh.51, PW 7 Rambhai Mashribhai Keshwala, Account holder at Exh.52, PW 8 Bhagwanji Punjabhi, Account holder at Exh.53, PW 9 Vinodbhai Ramanlal Shah, Panch at Exh.54, PW 10 Narsinhbhai Govindbhai (Panch) at Exh.56, PW 11 Arvindbhai Tulsidas Ganatra Ledger Keeper at Exh.58 PW 12 Devikumar Vanmalidas Mehta , Clerk –Cum-Cashier at Exh.64, PW 13 Keshavlal Madhavlal Kanjaria, Special Assistant in S.B.Department at Exh.65, PW 14 Amrutlal Zinjuwadia, Account holder, at Exh.68, PW 15 Muktaben Bhagwanji Surelia, Account holder at Exh.69, PW 16 Naradprasad Chimanlal Baria, Panch, at Exh.70, PW 17 Navinchandra Ranchhodbhai, Accountant at Exh.72, PW 18 G.N. Chatrati, Handwriting Expert at Exh.83, PW 19 Kasturben Juthalal, Account holder at Exh.86, PW 20 Govindbhai Somabhai, Officer of the Bank, at

Exh.87, PW 21 S.S.Shastri, Investigating Officer at Exh.92 and also produced documentary evidence vide list Exh.21 at page 163 of the compilation. Thereafter, the statement of the accused under Section 313 of the Criminal Procedure Code was recorded. The sum and substance of the further statement of the accused is that he had not misappropriated any amount and had not committed any offence, but had become the victim of politics in the bank and that he was falsely implicated in this crime, however, he had made certain admissions with regard to his specimen signatures, initials etc.

4. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution both oral as well as documentary, the learned Judge of the trial Court held that the prosecution has established beyond doubt that the appellant-accused has with a dishonest intention to the cheat the bank and the customers had resorted to falsification of books of account, and thereby misappropriated an amount of Rs.87,500/- and therefore, held the appellant-

accused guilty of the offence with which he was charged and passed the judgment and order of conviction and sentence as stated in para-1 of this judgment, giving rise to the present appeal.

5. Hear Mr.M.J.Buddhbhatti,learned Counsel for the appellant–accused, learned A.P.P. Mr.Mukesh A.Patel for the respondent no.1-State and Mr.Y.N.Ravani, learned Counsel for the respondent no.2.

6. The learned Counsel for the appellant, has raised several contentions in order to show that the prosecution has failed to establish the charges levelled against the appellant-accused beyond reasonable doubt, and submitted that the impugned judgment and order of conviction and sentence, deserves to be quashed and set aside by allowing this appeal.

7. The learned Counsel for the appellant-accused firstly submitted that there is no evidence on record to show that there has been dishonest misappropriation of an amount of Rs.1,22,500/-by the appellant-accused with

intent to cheat the customers by resorting to falsification of books of account. According to the learned Counsel to prove that there is misappropriation there should be evidence to show that there was shortage of cash in the bank. It has been next submitted by the learned Counsel that there is also no evidence to show the entrustment of the amounts in question to the appellant-accused. It is an admitted fact that in the instant case there is no direct evidence to show that the misappropriated sums were entrusted to the accused by the account holders, and for this purpose, the case rests entirely on circumstantial evidence. P.W.4 D.H. Thakkar Chief Cashier of the Bank of Baroda, Digvijay Plot Branch, Jamnagar in his deposition had stated to the effect that the moneys deposited vide counterfoils of the paying-in-slips Exhs.27, 36, 29,32 and 34 which are on record of the case were received by the appellant accused who was working in the said bank at the relevant time in the capacity of Receiving Cashier and that these counterfoils bear the signature of the accused,

however, in examination-in-chief this witness has admitted that the said counterfoils contained only initials of the appellant-accused but not full signatures. PW 17 Navinchandra Ranchhodbhai lends support to the statement made by PW 4 as he had identified the initials of the appellant-accused on the counterfoils. Exhs. 16, 55 and 71 are the specimen signatures, initials and hand writings of the accused respectively and they were taken in the presence of two witnesses by the Investigating Agency of CBI and the same has not been denied by the appellant-accused in his further statement. The specimen initials of the appellant-accused S-21 to S-62 tallies with the initials found in the couterfoils referred to above. Thus, the version of PW 4 and PW 17 that the counterfoils bear the signature of the appellant-accused stands duly proved, especially when, there is no denial from the appellant-accused on this count. Now, when the appellant-accused was the Receiving Cashier at the relevant time, it is quite natural to believe that the appellant accused had received the amounts as

mentioned in the counterfoils in question, more particularly when these counterfoils are found to bear the initials/signature of the appellant accused. In that view of the matter, it cannot be said that the essential requirement of entrustment of the amounts to the appellant-accused by the account holders is not fulfilled. Moreover, PW 4 has admitted in cross-examination that the appellant-accused also used to make entries in the pass books by way of helping others apart from D.V.Mehta and Ganata while PW 17 has stated that the entries in question in the pass book of the relevant account holders were in the handwriting of the accused. PW 5 Rajnikant, in his deposition at Exh.50 has stated that the pass-book with entry Exh.42 was made by the same person to whom he gave cash for depositing in his account. PW 5 Kanji in his deposition at Exh.51 has also stated that he went to the bank twice, but he had checked the entry only on the second occasion and found that the amount was credited to his account. PW 8 Bhagwan in his deposition at Exh.53 has stated that the same person to whom he

had given the pass-book, paying-in-slip and the money had returned the pass-book to him after 15 to 20 minutes Similar is the statement made by PW 15 Muktaben in her deposition at Exh.69 as also PW 19 Kasturben in her deposition at Exh.86. According to PW 19 the passbook was returned to her after about half an hour. Upon closely analyzing the evidence of these witnesses who are all account holders, this Court finds that the pass books of these account holders when submitted to the Receiving Cashier along with the paying-in-slips and the moneys that were to be deposited in all the cases the pass-books were returned within a reasonable time which shows that the entries have been made by the person who was discharging his duties as Receiving Cashier, and admittedly, the present appellant was the Receiving Cashier at the relevant time which is borne out from the deposition of PW 4 D.H.Thakkar, Chief Cashier of the bank. The details of entries in the pass-books with Exhibit number and amount misappropriated proved to be in the handwriting of the appellant-accused as per

the statement made by the witnesses, as discussed earlier, are of (1) Kasturben PW 19 holding account no.333 Exh.44, (2) Ramanbhai PW 17 holding account no.8086 Exh.43, (3) Muktaben PW 15 holding account no.3560 Exh.41, (4) Kanji Naran PW 6 holding account no.4030 Exh.46, (5) Rajnikant PW 5 holding Jt.Account no.1838 Exh.42 and (6) Bhagwanjibhai holding account no.5388 Exh.45. No doubt the evidence of these witnesses who are the officers of the bank and account holders with the bank is natural and probable, but with this evidence alone conviction cannot be based unless corroborated by other evidence on record. Now, if we look at the evidence of the handwriting expert PW 18 G.N.Chatrati at Exh.83 he has in no uncertain terms stated that the writer of the blue enclosed writings S-6 to S-10, S-80 to S-82, S-86, S-87, S-91, S-103, S-111 to S-120, S-131 to S 134 (specimen handwritings of the appellant-accused), A-1 and A-2 also wrote the red enclosed writings marked Q-1 to Q-6 (Questioned handwritings). It is important to note that the appellant accused has not denied

that Exhs.16, 55 and 71 being his specimen signatures, initials and handwritings in his further statement recorded under Section 313 of the Criminal Procedure Code. According to the handwriting expert PW 18 the entries in the pass-books Exhs.44, 43, 46, 42, 45, and 41 are identified to be that of the appellant-accused by the questioned handwritings Q-1 to Q-6. Mention also requires to be made here that the entries in the pass-books which have been admitted in evidence as referred to above also contain some disputed entries, however, these disputed entries are bound to be present since in the defence evidence it has come out that the appellant-accused also used to make entries in the pass-books in the nature of providing help to other staff members who were entrusted with such work. This act on the part of the appellant-accused smells foul as certainly the accused had taken this step with a dishonest intention to hide his deeds of misappropriation of huge amounts by resorting to falsification of the books of accounts of the bank for cheating the

bank/customer. With this set of evidence emerging from the record of the case, this Court finds no reason to disbelieve the evidence of the handwriting expert that stands fully corroborated by the evidence of PW 4, PW 17 and other evidence of account holders of the bank. I am therefore constrained to hold that the disputed handwritings in the passbooks are of the accused and none else. Considering this evidence the stand taken by the learned Counsel that entrustment of the amounts in question to the appellant-accused is not proved is not worthy of acceptance. The dishonest misappropriation of the various amounts deposited by the account holders by the appellant-accused shall be dealt with a little later. The learned Counsel next submitted that the initials on the counterfoils alleged to have been made by the appellant-accused are nothing but strokes, and therefore, also there is no legal proof on record to establish the entrustment. This contention cannot also be accepted in view of the fact that on a thorough study of the initials it is found that the same

are made in such an extraordinary and peculiar style that it is not even possible for any one to imitate or copy the same which shows that these initials are made by a person who knows the value of his initials. Moreover, as stated earlier, these initials have been proved to be of the appellant-accused by the handwriting expert with the aid of corroboration received from the evidence of two officers of the bank, namely PW 4 and PW 17.

8. The learned Counsel next contended that merely because some writings are proved to be in the handwriting of the accused, it cannot lead to an inference that incriminating documents or entries are in the handwriting of the appellant-accused. This invites me to refer to the entries in the Savings Bank Account of various customers allegedly made and scored out by the accused. PW 4 Chief Cashier of the bank in his examination-in-chief has stated that in R-37 Register (Receipt Payment Register) which is admitted in evidence at Exh.28 original entry was scored out and some other entry dated 6-11-1987 was made.

According to this witness, the writing was in the handwriting of the accused (Q-20, Q-20-A, Q-20C and Q-20-B). PW -11, the ledger keeper A.T.Ganatra has stated that the corresponding entry is at Exh.59 which relates to the account of Kasturben (PW 19) wherein entry of Rs.10,000/- was found to have been made and scored out. Thus, after scoring out the entry of Rs.10,000/- the credit entry of Rs.10,000/- as seen in the counterfoil Exh.27 and the pass-book entry Exh.44 does not at all appear in Exh.59. Now if we look at the deposition of PW 18, the handwriting expert he has opined that the questioned handwritings Q-20, Q-20-B, Q-20-C, namely, the handwritings in Exh.28(R-37 Register) were those of the same person who wrote the blue enclosed writings Mark S-6 to S-10, S-80 to S-82,S-86, S-87, S-91, S-103, S-111 to S-120, S-131 to S-134, A-1 and A-2 and also wrote the red enclosed writings marked Q-1 to Q-6 which is indicative of the fact that the said questioned handwritings are of the appellant-accused more particularly when in his further statement recorded under

Section 313, Cr.P.C. the appellant accused has admitted the said specimen handwritings as also the questioned handwritings to have been written by him. Even PW 17, the accountant of the bank in his deposition at Exh.72 has stated that the entry Exh.28 in R-37 Register was in the handwriting of the appellant-accused. Thus, it is established that the entry of Rs.10,000/-was scored out in R-37 register which means that this entry has been there in the R-37 Register at some point of time as otherwise this entry of Rs.10,000/- would not have appeared in Exh.59 (ledger). The balance prior to the disputed scored out entry was Rs.884-64 and after giving credit of Rs.10,000/-the balance was raised to Rs.10,884.64ps. Thereafter, on scoring out the entry of Rs.10,000/- the balance was again reduced to Rs.884.64p. No other person is alleged to have jointly done the work of Receiving Cashier at the relevant time, and therefore, the accused alone can be made responsible for reducing the balance to Rs.884.64ps. Exh.59 is the xerox copy of the original entry Exh.48 and

PW 4 in his deposition at Exh.23 has stated that the original entry was in the handwriting of the appellant-accused and the balance drawn after scoring out that entry was also in the handwriting of the appellant-accused. PW 4 is the Chief Cashier of the bank and when in cross-examination he has made a categorical statement that he is well conversant with the handwriting of the appellant-accused, there is no reason to disbelieve this witness. It is interesting to note that in Exh.28 dated 6-11-1987 the cash scroll the disputed receipt of Rs.10,000/- in the column of receipt where the amounts received by the appellant-accused is shown, is missing. This would go to show that the relevant voucher had been retained by the appellant-accused who was the Receiving Cashier thereby preventing the entry being made in the cash scroll which also reflects the dishonest intention of the appellant-accused. This act on the part of the appellant-accused is not only a violation of the procedure to be followed by him while discharging his duties as a Receiving Cashier but would

amount to cheating the customer and the bank itself by misappropriating an amount of Rs.10,000/-, as the absence of the relevant entry of Rs.10,000/- in the scroll would mean that the amount is not credited in the bank or even received at the bank. Thus, the appellant-accused having suppressed the voucher and prevented the entry from being made in the scroll is a circumstance which conclusively points to the guilt of the appellant-accused and none else. The argument advanced by the learned Counsel that there are no incriminating documents or entries in the handwritings of the appellant-accused on the record of the case showing his involvement in the commission of the crime in question does not merit acceptance.

9. I shall next deal with the entry of Rs.37,500/- dated 1-12-1987 in the account of PW 7 Rambhai Mashribhai Keshwala. Exh.36 is the counterfoil showing receipt of this amount. PW 4 has stated that the particulars of Exh.36 are at entry no.3 in the R-37 Register which is admitted in evidence at Exh.37. According to this

witness, the original entry was made and scored out and thereafter a new entry was posted and that both these entries bore the handwritings of the accused. Similar is the statement made by PW 17 Accountant. These entries are at Marks Q-21, Q-22 and Q-22-A. The handwriting expert PW 18 has in para -6 of his deposition stated that in Q-22, the original figure on examination under transmitted light and oblique light was found to be “8026” which is the S.B.Account number of PW 7 Rambhai whereas in Q-22-A the original figure was found to be “37,500”. The handwriting expert PW 18 has also opined that the red enclosed writings Q-21 and Q-22-A were those of the same person who wrote the blue enclosed writings Mark S-6 to S-10, S-80 to S-82 etc. which are the specimen handwritings of the appellant-accused not disputed by him. Undoubtedly, therefore, the author of the handwritings marked Q-21 and Q-22-A is the appellant-accused and none else. The ledger account of this wintness Rambhai is admitted in evidence at Exh.47 and the disputed entry therein is marked Q7. PW 17 Navinchandra

in his examination-in-chief has stated that in account no.8026, the entry Exh.47 was made and thereafter scored out and that these entries bore the handwriting of the appellant-accused. According to this witness, no entry of Rs.37,500/- was made on 1-12-1987 in the R-37 Register and this fact has been admitted by the accused in his further statement. PW 4 has also deposed to the effect that the entry of Rs.37,500/- made on page 279 (ledger account) was first made in the handwriting of the appellant-accused and was also subsequently scored out by the appellant-accused. Not only that according to this witness the balance drawn after scoring out the entry was also in the handwriting of the appellant-accused. PW-13 Keshavlal and PW 20 Govindbhai, the officers of the bank has stated that no entry of Rs.37,500/-relating to counterfoil Exh.36 was made on page 57 Exh.79 dated 1-12-1987 of the cash scroll in the column where the appellant-accused was supposed to make the entry. This leads me to believe that accused also did not account for this sum of Rs.37,500/-

received by him as is evident from the counterfoil Exh.36 and has thus misappropriated a sum of Rs.37,500/-.

10. With regard to PW-15 Muktaben holding S.B. Account no.3560, the counterfoil has not come on record and the amount of Rs.20,000/- received on 11-12-1987 does not find place in the scroll as per the evidence of PW 20-Govindbhai, officer of the bank and this fact is admitted by the appellant-accused in his further statement . however, there are four entries Exh.41 in the pass-book. In absence of the counterfoil there is no evidence in respect of entrustment of the amount, the accused cannot be blamed for non recording of the entry in the cash scroll or R-37 Register.

11. Kanji Naran PW 6 holder of S.B. Account no.4030 is alleged to have deposited Rs.10,000/- on 3-2-1988 and Rs.5000/- on 11-2-1988. The counterfoil Exh.29 relates to the deposit of Rs.10,000/-. PW 13 Keshavlal in his deposition at Exh.65 has stated that this entry of Rs.10,000/- was not entered on page no.131 of the cash

scroll(Mark 21/6), The accused in his further statement stated that there is one entry of Rs.10,000/- on 3-2-1988, verification of the voucher is necessary to identify whether it relates to counterfoil Exh.29. According to this witness PW-13 the other amount of Rs.5000/- deposited by this account holder on 11-2-1988 is also not mentioned in the cash scroll Mark 21/6 on page Exh.67. According to PW 17 the entries of Rs.10,000/- and Rs.5000/- were not made in R-37 Register while according to PW-20 these entries were not made in the cash scroll Mark 21/6. The accused in his further statement admitted that these entries were not there in R-37 Register, however, according to him, D.V.Vasa was also accepting receipts and his R-37 Register is also required to be verified, however, the same is not produced. The accused has also admitted that these entries were not mentioned in the Cash Scroll as deposed to by PW-20. Now, with regard to the amount of Rs.5000/- deposited by PW-6 Kanji Naran on 11-2-1988 there is no counterfoil bearing the initials of the accused. Therefore,

when entrustment of this amount to the appellant-accused has not been proved there is no question of the accused having misappropriated this amount. As far as the amount of Rs.10,000/- deposited on 3-2-1988 is concerned counterfoil Exh.29 shows that this amount was entrusted to the appellant-accused, but the prosecution having failed to explain the entry of Rs.10,000/- both in R-37 register and cash scroll, the appellant-accused cannot be made responsible for this amount also.

12. Amrutlal Desabhai Zinjzuvadia and Rajnikant Amrutlal Zinjuwadia are the joint account holders of S.B.Account no.1838. In this account Rs.30,000/- is alleged to have been deposited on 3-2-1988. There are two other transactions also in this account, namely, deposit of Rs.10,000/- on 4-4-1988 and the withdrawal of Rs.10,000/- by cheque Exh.25 of same date. With regard to the deposit of Rs.30,000/- on 3-2-1988 the counterfoil Exh.32 shows that the amount was entrusted to the appellant-accused. PW 4 has deposed to the effect that entry Exh.33 on page 8

of R-37 Register was mutilated by the appellant-accused so that the amount reads as 10,000/- instead of Rs.30,000/-. This mutilated entry is mark Q-24 and Q-24-A. The handwriting expert has opined that in the red enclosed portion mark Q-24-A the original figure “3” in five digit figure has been altered to the existing figure “1” by overwriting. PW-13 has deposed to the effect that no entry of Rs.30,000/- was made in the cash scroll on 3-2-1988 while PW 17 has deposed that entry of Rs.30,000/- was not made in the R-37 Register on 3-2-1988. This position is admitted by the appellant-accused in his further statement. When the amount of Rs.30,000/- is proved to have been entrusted to the appellant-accused and this entry is not reflected in his R-37 Register as also in the cash scroll, it can be presumed that the related voucher portion of the paying-in-slip has been suppressed or destroyed by the appellant-accused with a dishonest intention of misappropriating and thereby to cheat the customers of the bank and the bank itself.

13. PW 8 Bhagwanji is the holder of S.B.Account no.5388. In this account Rs.10,000/- is alleged to have been deposited on 4-4-1988. The relative counterfoils is at Exh.34. PW 4 has deposed that on page 53 of R-37 Register, the entry Exh.35 (Marked Q-26 and Q-26-A) at Sr.no.20 was mutilated by the appellant-accused. PW 18 handwriting expert has deposed that in the red enclosed portion marked Q-26-A, the first three figures “1”, “0”, “0” in “10,000” has been altered to “0” “4” and “2” by overwriting so that the figure “10,000” would read as “04200”. The handwriting expert has opined that the entire red enclosed writing marked Q-25 on page 53 of R-37 Register is in the handwriting of the person who wrote the blue enclosed writings marked S-6 to S-10, S-80 to S-82 etc.(specimen signatures of the accused). PW 13 Keshavlal in his evidence at Exh.65 has deposed that on page no.191, Exh.66 dated 4-4-1988 there is no entry of Rs.10,000/- in the cash scroll Mark 21/6, however, the accused when confronted with this, he stated that there was one entry of Rs.10,000/-but he is not

aware whether it relates to Exh.34 or not. Both in R-37 register and cash scroll, an entry of Rs.10,000/- is shown at Sr.no.45, however, it is found that this entry at Sr.no.45 relates to S.B.Account no.1838 i.e. of Amrutlal Zinjuvadia. It is thus clear that this entry of Rs.10,000/- does not relate to Exh.34, and therefore, the amount of Rs.10,000/- has not been credited to the account of PW 8 Bhagwanji both in R-37 Register and cash scroll.

13. In view of what has been discussed herein above, this Court finds sufficient evidence to conclude that the appellant-accused has dishonestly misappropriated an amount of Rs.87,500/- with intent to cheat the customers of the bank and the bank itself by resorting to falsification of books of account., and therefore the argument advanced by the learned Counsel that there are no incriminating documents or entries in the handwriting of the appellant-accused on the record of the case is of no help to the appellant-accused.

14. Reverting back to the amount of

Rs.10,000/- by cheque Exh.25 presented by the PW 14 Amrutlal, account holder of S.B. Account no.1838 on 4-4-1988 and after depositing Rs.30,000/- on 3-2-1988 which was not accounted for by the accused, it is found that the appellant-accused himself with a view to escape from being exposed filled up a paying -in-slip and deposited an amount of Rs.10,000/- in that account thus enabling the encashment(withdrawal) of the amount of Rs.10,000/- as is evident from the depositions of PW 4, PW 14 and PW17. The relevant entries in the Ledger account of Amrutlal Zinjuwadia is on record of this case at Exh.26 , according to which, on 4-4-1988, firstly, a sum of Rs.10,000/- is shown to have been deposited and immediately thereafter, an entry of withdrawal of Rs.10,000/-appears. Prior to 4-4-1988 the balance found is Rs.271-55. PW -4 has deposed that entry Exh.26 is in the handwriting of the appellant-accused marked Q-8. He has also stated that the paying-in-slip Exh.38 was dated 4-4-1988 in the name of Amrutlal for Rs.10,000/- but the entire handwriting thereof

was of the appellant-accused which is marked as Q-16. According to the handwriting expert PW-18 the handwriting marked Q-8 were of the same person who wrote the specimen handwritings S-6 to S-10, S-80 to S-82 etc.,(specimen handwritings of the accused admitted by him), meaning thereby, of the accused. PW 4 has deposed that entry Exh.38 dated 4-4-1988 of Rs.10,000/- at Sr.no.45 of R-37 Register as also the entry Exh.26 in the S.B.A/c no.1838 on page 467 of the Ledger were in the handwriting of the accused. PW-17 has deposed that the voucher Exh.38bears the handwriting of the accused and that the same is also signed by the accused. According to PW 14 Amrutlal account holder of S.B.Account no.1838, he had not deposited Rs.10,000/-on 4-4-1988 the day on which he withdrew the amount of Rs.10,000/- by cheque. Undoubtedly, therefore, the appellant-accused with a view to see that the cheque of Rs.10,000/- presented by Amrutlal is honoured and the amount is withdrawn, had managed to deposit Rs.10,000/- in S.B.Account no.1838 with a dishonest intention to conceal the fact that he had not

accounted for the deposit of Rs.30,000/- earlier deposited by the account holder. The conduct of the appellant-accused in this transaction coupled with the other transactions discussed earlier, strengthens the finding recorded herein above that the appellant-accused with an intention to cheat the customers of the bank and the bank itself resorted to falsification of books of account, dishonestly misappropriated an amount of Rs.87,500/- and converted the same to his own use. The submission that to prove dishonest misappropriation there should be evidence to show shortage of cash in the bank is of no relevance since the accused had very cleverly seen to it that no shortage of cash takes place by depositing such amount in the bank on his own so that his misdeeds may not be exposed as discussed above.

15. There is yet another aspect for consideration. Exh.40 is the writing recovered from the house of the appellant-accused during the search of his house undertaken by the Investigating Officer, C.B.I. on 7-9-1988 in

presence of two Panchas. This writing contains the names of the account holders in question together with the amount misappropriated in each case presumably with a view to keep track of the amount misappropriated and to take preventive measures from being exposed in connection with his misdeeds of misappropriation. PW-10 (Panch) has deposed to the effect that Exh.40 is one of the documents seized during the investigation which is admittedly in the handwriting of the accused as per his further statement. The handwriting expert PW 18 has also opined that d Exh.40 (Mark Q-17) was in the handwriting of the appellant-accused when he stated that the person who wrote the blue enclosed writings Mark S-6 to S-10, S-80 to S-82 also wrote the red enclosed writings Mark Q-17. The appellant accused has tried to explain the possession of the writing Exh.40 by stating that the Manager Mr.Nakun (since dead) had sought some explanation in respect of some account holders where crores of rupees had come to light in the accounts, that one Madhubhai Mamtora was dismissed after

departmental inquiry. This explanation tendered by the appellant-accused is difficult to swallow as there is nothing on record to show as to whether the accused was called upon to provide explanation, and therefore, he had prepared the writing Exh.40. This Court is , therefore, of the opinion that the recovery of Exh.40 during search of the appellant-accused further cements the findings recorded by me that the appellant-accused was entrusted with the amounts in question and the same were dishonestly misappropriated by him.

16. Learned Counsel next submitted that there is no valid sanction for prosecution as there is non application of mind on the part of the sanctioning authority which vitiates the prosecution. In the instant case, the Sanctioning Authority & Deputy General Manager C.D.Ramamurthy has himself entered the witness box and deposed to the effect he was competent to remove the appellant-accused from service, that all papers relating to the case were with him and he had devoted three hours time on reading

the same before he dictated the Sanction Order to his Stenographer (PW 1), that after the sanction order was got typed he had read the entire sanction order and thereafter on being satisfied that the contents are correct he had signed it . In cross examination this witness has also stated that counterfoils of paying-in-slips,, R-37 Registers, specimen handwritings and signatures of the appellant-accused where with him in the form of a report of the C.B.I. Inspector. This fact receives corroboration from the evidence of PW 1 (Stenographer). This Court is therefore of the opinion that in view of this evidence the facts constituting the offence having been placed before the sanction authority in order to obtain the sanction,, and as such, the sanction for prosecution in this case does not suffer from any infirmity.

17. The learned Counsel for the petitioner has also attacked the validity of the sanction order on the ground that the same has been granted on 21st August,1989 under the old Prevention of Corruption Act,1947 which is

repealed by the New Act. According to the learned Counsel reference to Section 6(1)(c) of the Prevention of Corruption Act, 1947 was erroneous and vitiated the validity of the sanction order inasmuch as under the new Act the relevant section was Section 19 for obtaining sanction. The repealed and saving clause Section 30 of the New Act of 1988, Sub-section (2) provides as under:

> "(2) Notwithstanding such repeal, but without prejudice to the application of Section of the General Clauses Act, (1897), (10 of 1897) anything done or any action taken or purported to have been done or taken under or in pursuance of the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding previous provisions of this Act."

18. On a careful study of this saving Clause Section 30, it becomes clear that reference to

Section 6(1)(c) of the Act of 1947 made in the sanction order does not have any invalidating effect on the sanction order as it is not inconsistent with the provisions of the New Act. The sanction order can therefore be deemed to have been passed under or in pursuance of the corresponding provisions of the New Act, of 1988 and is therefore quite legal and proper. Even otherwise, the impugned transactions having taken place between the period from 1987 to April, 1988 which means the offence in question had taken place during the period when the old Act was in force whereas the New Act of 1988 was enacted on 9th of September, 1988, and therefore, considering this aspect also, the sanction order having been granted in reference to Section 6(1)(c) of the Old Act is quite proper.

19. The learned Counsel next submitted that there is no direct evidence of entrustment, that the accused was not the only receiving cashier, that the manager in case of emergency was taking cash from the customers and that one Mr. Mamtore was collecting cash unauthorisedly who was

discharged on charges of misappropriation, that the disputed amount might have been entered in the suspense account, that there are missing links in the chain and that it is impossible to remove such huge amounts from the bank unnoticed. It is significant to note here that the entire case rests on circumstantial evidence. As can be visualised from what is discussed herein above. the following are the circumstantial evidence in the opinion of this Court which can be accepted, leading to the proof of guilt of the appellant-accused in the commission of the offences for which he is charged: (i) initials of the accused in counter-foils of paying-in-slips, (ii) entries in pass-books made by the accused. (iii) entries in the Savings Bank Account books made and scored out by the accused (iv) intentional omission of entries in the required books of accounts, (v) deliberate deposit in S.B.Account no.1838 made by the accused for enabling the cheque of Rs.10,000/- to be encashed, (vi) note Exh.40 recovered from the house of the accused on search, containing details of amount

misappropriated from different account holders.All these circumstances, in the opinion of this Court form a complete chain that unerringly points to the guilt of the appellant-accused. It is important to note here, that in relation to all the four transactions for which the appellant-accused is held guilty as aforesaid, we have the evidence of witnesses who are employees of the bank itself, namely,PW 4, Chief Cashier , PW 17, Accountant, PW 13, Special Assistant in S.B.Department, PW 20, Officer, as also PW 18 the handwriting expert. Nothing is elicited in cross-examination of these witnesses who are bank employees that could lead me to believe that they are not conversant with the handwritings of the accused or would impeach the credibility of their evidence. These witnesses have identified the handwriting of the appellant-accused on the counterfoils Exhs.27, 36, 29, 32 and 34 and the same are corroborated by the opinion of the handwriting expert who had assigned valid reasons (Exh.85) for coming to the conclusions that the disputed handwritings were

of the appellant-accused. This coupled with the fact that Exhs.16, 55 and 71 which are the specimen signatures, initials and handwritings of the appellant-accused having not been denied by the appellant-accused in his further statement, the only irresistible conclusion that this Court can arrive at is that the prosecution has succeeded in establishing beyond all reasonable doubt with the help of circumstantial evidence that the appellant-accused has misappropriated an aggregate sum of Rs.87,500/-deposited by four Savings Bank Account Holders of Digvijay Plot Branch of Bank of Baroda, Jamnagar, in the year 1987-88 and also that the appellant-accused scored out several entries in R-37 Register and Ledger for misappropriating the sums covered by those entries with a dishonest intention to cheat the customers of the bank and the bank itself by resorting to such falsification of books of account. As discussed earlier, the appellant-accused has not accounted for these sums, and therefore, presumption would be that he had converted the same for his own use. In view

of these findings, the contentions that the appellant-accused was not the only Receiving Cashier, that the Manager in case of emergency was collecting cash from the customers, that one Mamtore was collecting cash unauthorisedly, that the amounts might have been entered into suspense account, that it is impossible to remove such huge amounts from the bank unnoticed and that there are missing links in the chain are baseless.

20. In support of my conclusions, reference may be had to the decision rendered in the case of Usman Mian v. State of Bihar, 2004 (1) SCC 786 wherein at Para 14 of the judgment, the Honourable Supreme Court has observed as under:

“It may be stated that for a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved

indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue, but consists of evidence of various other facts which are so closely associated with the fact in issue which taken together form a chain of circumstances from which the existence of the principal fact can be legally inferred."

21. Coming now to the question with regard to the charge under Section 409 of IPC against the appellant-accused, on having a bare look at the provisions of the Indian Penal Code as also the Prevention of Corruption Act, 1988, there cannot be any dispute to the fact that the appellant-accused is a public servant, he being employed with Bank of Baroda, a nationalized bank whose nationalization was done under the Central Act. To prove entrustment with the property or dominion over the property, it is not necessary for this Court to repeat the findings already discussed above in detail in connection with the four transactions in question. Suffice, it to

say, that there is entrustment of property and failure in breach of an obligation. and therefore, offence of criminal breach of trust is clearly made out and the appellant-accused is liable to be convicted under Sec.409 of the Indian Penal Code. In respect charges under Section 477-A, it has already been held by me that the appellant-accused has indulged into mutilating the entries in the Registers of the bank by scoring out and re-writing the same and also indulged into willful omission of making the entries in the required Registers with a dishonest intention to cheat the bank and save himself from accounting for that money, and therefore, the appellant-accused is liable to be convicted under Section 477-A of the Indian Penal Code. As far as the charge for the offence punishable under Section 5(2) of the Corruption Act is concerned, as already dealt with by me herein above, there is evidence to show that the appellant-accused who is a public servant has abused his position as a Receiving Cashier of the bank by indulging into various mal-practices and

thereby had not accounted for various sums deposited by the account holders in the bank with a dishonest intention of obtaining for himself a pecuniary advantage, and hence, the appellant-accused is liable to be convicted for the offences punishable under Section 5(2) of the Prevention of Corruption Act.

21.1. The learned Counsel for the appellant-accused in support of his submissions has relied on the following authorities – (1)Janeshwards v. State of U.P. reported in AIR 1981 SC 1646, (2) Roshanlal Raina v. State of Jammu and Kashmir reported in AIR 1983 SC 631, (3) Dadarao v. State of Maharashtra reported in AIR 1974 SC 388, (4) Harendra Narayan Singh v. State of Bihar reported in AIR 1991 SC 1842, (5) Bhanubhai Rambhai v. State of Gujarat reported in 1976 G.L.R. 699, (6) Ram Gonal v. State reported in AIR 1954 M.B. 135, (6) Bhawan Kaur v. M.K.Sharma, reported in AIR 1973 SC 1346 and (7) Ganeshbhai Shankerbhai v. State of Gujarat, reported in AIR 1972 SC 1618. I have given due though and consideration to these authorities in light of the submission canvassed

by the learned Counsel for the appellant-accused, however, I find that none of these authorities can be made applicable to the facts of the present case and that the learned trial Judge had dealt with and interpreted these authorities very correctly.

22. The learned Counsel for the appellant-accused has also contended that the charge is not according to the provisions of Sec.211 to 222 of the Criminal Procedure. This contention has to be stated merely for being rejected in view of the fact that there are exceptions to the rule that there should be separate trial for each charge. The decision in the case of Somabhai Shamalbhai Patel & Ors. v. State of Gujarat reported in 1987 G.L.R 111 cited by learned Counsel rather goes against him (See para 7 thereof.)

23. The learned Counsel for the respondents nos.2 as also the learned A.P.P. while taking me through the judgment and order passed by the trial Court has submitted that the learned Judge of the trial Court has appreciated the evidence

in its right perspective and arrived at a just and proper conclusion in convicting the appellant-accused for the offences with which he was charged. It is further the submission of the learned Counsel that by voluminous evidence produced by the prosecution the complicity of the appellant-accused is proved beyond reasonable doubt and that the chain of circumstances is so complete that conviction can be based on the same.

24. No other contentions have been raised. No infirmity in the reasoning of the trial Court is pointed out. The trial Court has carefully analysed and appreciated the evidence on record and passed a well-reasoned judgment and order of conviction and sentence with which I fully concur.

25. Having critically examined the evidence from all angles, be it circumstantial evidence, I am of the view that the trial Court has carefully and correctly, analysed the evidence and had given cogent and convincing reasons to

establish the guilt of the accused, and I find no ground much less reasonable ground to doubt the prosecution case. The learned Counsel for the appellant-accused has failed to persuade me to differ from the conclusions reached by the learned trial Judge. Thus, in my opinion, the circumstantial evidence discussed above, conclusively and unerringly leads to the only irresistible conclusion that the appellant accused and none else has dishonestly misappropriated an amount of Rs.87,500/- with intent to cheat the customers of the bank and the bank itself by resorting to falsification of books of account, and thereby, committed offences in respect of the charges levelled against him.

26. The net result of the aforesaid discussion is that the prosecution has proved beyond reasonable doubt that the appellant is guilty of the offences with which he was charged as all the circumstances, in my opinion, point towards the guilt of the appellant-accused in the commission of the crime in question and there is no merit in the appeal. The appeal is, therefore,

liable to be dismissed.

27. For the foregoing reasons the appeal fails and is hereby dismissed. The appellant-accused is on bail. His bail bonds shall stand cancelled. The appellant-accused is directed to surrender before the jail authorities within a period of 30 days from the date of this judgment.

(M.D.Shah,J.)

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